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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,651	03/01/2004	James F. Zucherman	5910-168	9758
65901 MEDTRONIC	7590 03/24/200	9	EXAMINER	
Attn: Noreen Jo	ohnson - IP Legal Depa	artment	CUMBERLEDGE, JERRY L	
2600 Sofamor Danek Drive Memphis, TN 38132			ART UNIT	PAPER NUMBER
			3733	
			MAIL DATE	DELIVERY MODE
			03/24/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)	
10/790,651	ZUCHERMAN ET AL.	
Examiner	Art Unit	
JERRY CUMBERLEDGE	3733	

2. ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  AMENDMENTS 3. ☑ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☑ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They raise the issue of new matter (see NOTE below); (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).  4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  5. ☐ Applicant's reply has overcome the following rejection(s):  6. ☐ Newly proposed or amended claims would be rejected is provided below or appeade.  7. ☑ For purposes of appeal, the proposed amendment(s): a) ☑ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) objected to: 5.  Claim(s) objected to: 5.  Claim(s) objected to: 5.  Claim(s) objected to: 5.  Claim(s) withdrawn from consideration:  AFFIDAVIT OR OTHER EVIDENCE.  8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier prese		JERRI COMBERLEDGE	3733	
1. ☑ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: a) ☐ The period for reply expires on. (1) the mailing date of the final rejection. b) ☑ The period for reply expires on. (1) the mailing date of the final rejection. c) ☑ The period for reply expires on. (1) the mailing date of the final rejection. c) ☑ The period for reply expires on. (1) the mailing date of the final rejection. c) ☑ The period for reply expires on. (1) the mailing date of the final rejection. c) ☑ The period for reply expires on. (1) the mailing date of the final rejection. c) ☑ The period for reply expires on. (1) the mailing date of the final rejection. c) ☑ The period for reply expires on. (1) the mailing date of the final rejection. c) ☑ The period for reply expires on. (1) the selected checked existence there to ∞ (2) or (5) ONLY-CHECK OX (6) WHEN THE FIRST REPLY-WAS FILED WITHIN TWO MONTHS from the mailing date of the final rejection, which can be appropriate of the final rejection of the final rejection, oven if timoly filed, may reduce any earned palain term adjustment. See 37 CFR 1.704(p).  MOTICE OF APPEAL  □ The Notice of Appeal was filed on	The MAILING DATE of this communication appe	ears on the cover sheet with the c	correspondence add	ress
application, application, application, application, application, application, application in condition for allowance; (2) a hottee of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filled within one of the following time periods:  a) The period for reply expires	THE REPLY FILED <u>05 March 2009</u> FAILS TO PLACE THIS AF	PPLICATION IN CONDITION FOR	ALLOWANCE.	
<ul> <li>b)</li></ul>	application, applicant must timely file one of the following application in condition for allowance; (2) a Notice of Appe for Continued Examination (RCE) in compliance with 37 C	replies: (1) an amendment, affidavi eal (with appeal fee) in compliance	t, or other evidence, w with 37 CFR 41.31; or	hich places the (3) a Request
no event, however, will the statutory period for reply expire later than SIX MONT'S from the mailing date of the final rejection.  Examiner Note: If the X-1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 716.07(f).  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension for have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension for the content of the file of the filed of filing the Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  AMENDMENTS  3. A proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below);  (b) They raise not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  (d) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  (d) They present additional claims without canceling a correspondin	a) The period for reply expiresmonths from the mailing	g date of the final rejection.		
have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for repty originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filled, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).  NOTICE OF APPEAL    The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37(m), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).    AMENDMENTS	no event, however, will the statutory period for reply expire Is Examiner Note: If box 1 is checked, check either box (a) or ( MONTHS OF THE FINAL REJECTION. See MPEP 706.07(	ater than SIX MONTHS from the mailing (b). ONLY CHECK BOX (b) WHEN THE f).	g date of the final rejection FIRST REPLY WAS FI	on. LED WITHIN TWO
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<ul> <li>Applicant's reply has overcome the following rejection(s):</li> <li>Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</li> <li>For purposes of appeal, the proposed amendment(s): a) ☑ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: 15-28,33 and 37. Claim(s) objected to: 5. Claim(s) rejected: 1-4,6-14 and 38-52. Claim(s) withdrawn from consideration:</li> <li>AFFIDAVIT OR OTHER EVIDENCE</li> <li>¶ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</li> <li>¶ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</li> <li>¶ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER</li> <li>¶ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:</li> <li>Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s)</li></ul>	·	,	mnliant Amendment (	PTOL-324)
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Claim(s) rejected:				

Continuation of 3. NOTE: New claim 53 will require further search and/or consideration by the examiner.